

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on: 02.03.2024  
Pronounced on: 15.03.2024

**HCP 46/2023**

**Shabir Ahmad Wani**

... Petitioner/Appellant(s)

Through: Mr. Mohammd Ashraf Wani, Advocate

V/s

**UT of J&K and others**

... Respondent(s)

Through: Mr. Zahid Qais Noor, GA

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**ORDER**

15.03.2024

1. Heard learned counsel for the petitioner as well as for the respondents. Perused the writ pleadings and the documents annexed therewith.
2. The petitioner through his father is maintaining this writ petition seeking a writ of habeas corpus for quashment of preventive detention slapped upon him and consequently restoration of his personal liberty by the indulgence of this court.
3. The respondent no. 2 – District Magistrate Pulwama came to be approached by the respondent 3 – Senior Superintendent of Police (SSP), Awantipora through a dossier no. Conf/PSA/2023/569-72 dated 15.06.2023 concerning the petitioner projecting his alleged activities prejudicial to the maintenance of Public Order warranting his preventive detention.

4. In response to this dossier from the respondent no. 3 – Senior Superintendent of Police, Awantipora, the respondent no. 2 – District Magistrate Pulwama came to draw grounds of detention warranting the petitioner's preventive detention under J&K Public Safety Act, 1978.
5. In the grounds of detention, the factual aspect being related to the petitioner's alleged acts of omission and commission prejudicial to the maintenance of Public Order is that the petitioner along with his accomplice were luring the students and their families in the name of providing fake question papers for B. Sc. Nursing Exams scheduled to be conducted by the J&K Board of Professional Entrance Examinations for the year 2023 and under that guise extracted and extorted huge money from the gullible students and their parents. This scam resulted in registration of an FIR no. 53/2023 with the Police Station Tral for alleged commission of offences under section 420 and 120-B of the Indian Penal Code.
6. It is by reference to this alleged clandestine duping of students and their parents by the petitioner and his alleged accomplice that the respondent 2 – District Magistrate Pulwama read the petitioner in a profile that he is an active member of a gang indulging in cheating and defrauding the innocent students under the lure of providing them question papers and by such fraud, cheating and forgery are leaving the gullible students as his victims.
7. The dossier submitted by the respondent 3 – Senior Superintendent of Police, Awantipora and the grounds of detention are in mirror image of each other and the salient feature of the entire case for the

preventive detention of the petitioner is the registration of FIR 53/2023.

8. Neither the dossier nor the grounds of detention further divulge as to what course of action came to take place in furtherance of registration of the FIR no. 53/2023 under sections 420 and 120-B of the IPC against the persons named in the said FIR as accused persons. It is the petitioner, who in his representation, came to disclose that he was arrested on 11.06.2023 by reference to the FIR no. 53 of 2023 and came to be granted interim bail by Judicial Magistrate 1<sup>st</sup> Class, Tral on 16.6.2023 but despite that he was not let free by the Police till the issuance of the detention order against him thereby getting him under preventive detention custody to be lodged in Central Jail Kotbalwal, Jammu.
9. This one fact comes staring at the dossier served by the respondent 3 – Senior Superintendent of Police, Awantipora and the grounds of detention as claimed by respondent 2 – District Magistrate Pulwama to be in support of preventive detention order against the petitioner which brought him under preventive detention custody now lasting for more than eight months. The total detention period under section 18(1)(a) under J&K Public Safety Act, 1978 is 12 months from the date of detention. Otherwise also, the alleged acts of omission and commission on the part of the petitioner which has led to his booking in FIR 53/2023 under section 420 read with section 120-B of the IPC cannot be read to be prejudicial to the maintenance of public order as the alleged acts of omission and commission on the part of the petitioner and his accomplice, at the best, could be a law and order problem for which routine criminal

law is meant to serve the purpose for the purpose of procuring the offender to law and get him convicted and punished accordingly. Preventive detention mode cannot be used as a substitute for detention what punitive detention is meant to serve by following regular course of law in the form of a criminal trial of a case and getting the judgment of conviction against the accused persons.

10. In this regard, the Hon'ble Supreme Court of India in case titled as **Ayya alias Ayub versus State of UP reported in 1989 AIR SC 364**, in para 12 has dealt with the Public Order & Law and order dynamics by reference to understanding of the matter as carried out the Constitution Bench of the Hon'ble Supreme Court of India in **Ram Manohar Lohia Vs. The State of Bihar and another, 1966 AIR SC 740**.
11. In the case of **K. K. Saravana Babu Vs. State of Tamil Nadu and another, 2008 (9) SCC 80**, the Hon'ble Supreme Court has kept the distinction between Public Order and Law & order in sharp perspective by taking stock of catena of decisions on this aspect. By referring to the Constitution Bench judgment in the case of **Brij Bhushan and another vs. The State of Delhi (1950) SCR 605**, in which Public Order is paraphrased in the context of "Public Tranquility", the Hon'ble Supreme Court has not let Law & order situation get colour and contour of "Public Order" to slap preventive detention.
12. By bearing in mind the precepts so settled, the present case is also case of Law & order whereby the petitioner came to be booked and there was no occasion for the District Magistrate, Pulwama to

curtail the personal liberty of the petitioner by resort to J&K Public Safety Act, 1978.

13. In the light of the aforesaid, the detention order no. 45/DMP/PSA/23 dated 26.06.2023 passed by the respondent 2 – District Magistrate, Pulwama against the petitioner is held to be unwarranted, and, therefore, the said order is set aside. The Superintendent of the Jail concerned, where the petitioner is being detained, is directed to set the petitioner free.
14. Disposed of.

**(RAHUL BHARTI)**  
**JUDGE**

Srinagar  
15.03.2024  
*N Ahmad*

*Whether the order is speaking: Yes*

*Whether the order is reportable: Yes*

